

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

HOWARD ORLOFF IMPORTS, INC.

Employer

And

AUTOMOBILE MECHANICS LOCAL NO. 701, INTERNATIONAL
ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO

Petitioner

Case 13-RC-21069

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:³

All full-time and regular part-time mechanics, apprentice mechanics, semi-skilled and lube rack mechanics employed by the Employer at its facility currently located at 1924 N. Paulina, Chicago, Illinois; but excluding all office clerical employees, professional employees, managerial employees, sales employees, all other employees, guards and supervisors, as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees

Howard Orloff Imports, Inc.
13-RC-21069

engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Automobile mechanics Local No. 701, International Association of Machinists & Aerospace Workers, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **November 17, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **November 24, 2003**.

DATED November 10, 2003 at Chicago, Illinois.

/s/Roberto G. Chavarry

Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The Employer's name appears as amended at the hearing

2/ The arguments advanced by the parties at the hearing and in the Employer's brief have been carefully considered.

3/ Howard Orloff Imports, Inc. (herein the "Employer") is a corporation engaged in the business of selling and servicing new and used Jaguars and Volvos.

4/ The Employer is a Jaguar and Volvo automobile dealer at a facility located at 1924 North Paulina, Chicago, Illinois. The Employer is divided into three operational departments – the Sales Department, Service Department, and Parts Department. Automobile Mechanics Local No. 701, International Association of Machinists & Aerospace Workers, AFL-CIO (herein the "Petitioner") seeks to represent a unit of all full-time and regular part-time mechanics in the Employer's Service Department. The mechanics, whom are classified as technicians by the Employer (hereinafter referred to as mechanicsⁱ), are one of several classifications of employees working in the Employer's Service Department. The Employer takes the position that the other two classifications of employees in the Service Department, the service advisors and the dispatchers, must be included in the appropriate unit. Thus, the issue to be determined herein is whether the Employer's mechanics constitute an appropriate unit without the inclusion of the service advisors and dispatchers, or whether an appropriate unit must include the service advisors and dispatchers.

Based upon the entire record, the evidence set forth below, and applicable case law I find that the unit sought by the Petitioner is an appropriate unit as the mechanics constitute a homogenous grouping of craft employees with a separate distinct community of interest from the other employees in the Service Department.

Structure of the Service Department

Jeffery Orloff, one of the Senior Partners in the Employer, manages the Service Department. Lido Petrucci, Service Director, reports to Jeffery Orloff, and Tim Kalvelage, Service Manager, reports to Petrucci and Jeffery Orloff. The mechanics, service advisors, and dispatchers at issue herein are all part of the Service Department and work under the supervision of Jeffery Orloff, Petrucci, and Kalvelage. There are thirty mechanics whose job is to repair automobiles for the Employer's customers. About ten of the mechanics work on Jaguar automobiles, and about 20 of the mechanics work on Volvo automobiles. There are seven service advisors in the Service Department. They work with the customers who bring their automobiles in for repairs. There are three dispatchers in the Service Department who prepare the paperwork for repairs and price out repair jobs. The service advisors and dispatchers are also split between dealing with either Jaguar automobiles or Volvo automobiles. One dispatcher serves as a back up to the two other dispatchers and service advisors when necessary. Mechanics work in the shop area, service advisors work in the service drive area that's adjacent to the shop and

ⁱ Both parties used the terms "technicians" and mechanics" interchangeable at the hearing. However, as both parties used the term "mechanics" in setting forth their descriptions of their proposed units, that is the term that will be used herein.

dispatchers usually sit in the service dispatch office, which is located between the Jaguar and Volvo service areas.

The Employer classifies its mechanics into two skill levels – (1) those that can perform any repair problem that comes into the Service Department, and (2) those that can only handle routine jobs such as oil changes, tire changing, tire rotation and some other simple jobs. Jeffery Orloff's testimony shows that these skill levels equate with journeyman and apprentice skill levels, and he testified that approximately 24 of the 30 mechanics are at journeyman skill level and six have the apprentice skill level. Mechanics provide their own tools to perform the automobile repairs. These tools can be very expensive. The testimony of one mechanic indicated he spent \$30,000 on his tools.

Service advisors greet customers and make out the work orders based on the customer's description of the problem. They have the primary responsibility for the Service Departments contact with customers from the point the customer brings in the automobile to the conclusion of the repairs, keeping the customer informed of repair progress, obtaining authorization to proceed with required repairs, and informing the customer of any unexpected issues that may have arisen. Service advisors have some knowledge of automobiles and repairs, and they may perform some minor repairs, such as the replacement of light bulbs, wiper blades, and resetting 'check engine' or warning lights.

Dispatchers work with both the service advisors and mechanics in dispatching work in the shop. They are responsible for handling the paper work involved in the work order, pricing out the labor and parts charges for the repairs that the mechanics have identified as being needed. They book out the completed repairs and do any finalizing for any other required paperwork. Dispatchers may call warranty companies to get prior approval for repair work that may be covered by warranties. In addition, dispatchers may cover for a service advisor position if necessary.

Work Flow in the Service Department

Customers bring their Jaguar or Volvo automobile into the service drive area where they are met by a service advisor. The customer describes the reason they're there to the service advisor. Based on the customer's description of the reason or problem, the service advisor will generate a work order. The service advisor looks up the records of the customers previous visit on a computer and will advise the customer if the automobile is due for any scheduled maintenance according to the manufacturers maintenance schedule. If the customer's problem involves previous repair work performed by the Service Department the service advisor will put the name of the mechanic who did the previous repair work on the work order. Otherwise, the work orders are taken randomly by the next available mechanic that has the appropriate skill level for the job. The service advisor then brings the paperwork to the dispatch office where a dispatcher places it in a "work to be done" pile. Mechanics obtain their job assignments from computer terminals located in their workstations. If a work order has a name of a mechanic on it, that mechanic will first take that work order, otherwise the mechanic will take the next available appropriate work order. After the mechanic has reviewed the work order and inspected the automobile, he takes the paperwork into the dispatch office and into the

parts department to obtain the parts he needs to perform the particular jobs. The mechanic may show the dispatcher what repairs need to be done, especially if there are complications as the dispatcher is responsible for the paperwork that determines the charges for the repair work. In such circumstances, the mechanic may bring the dispatcher over to the automobile to review the problems. The mechanic may also show the service advisor the complications involved in a particular repair, as the service advisor has to communicate with the customer the progress of the repairs and any complications or additional work or charges that might be incurred to obtain approval to perform the work.

Working Conditions in the Service Department

Mechanics are usually hired from another Jaguar or Volvo dealership, an independent shop or any franchise dealer in Chicago. Mechanics may also be hired from schools that Jaguar and Volvo each have to train apprentice mechanics with the basic maintenance skills involved with Jaguar or Volvo automobiles. Service advisors and dispatchers usually apply for a job either from a referral or from an ad put in the paper. Petrucci and Kalvelage screen candidates for mechanic positions, service advisor positions, and dispatcher positions. Jeffrey Orloff then interviews the candidates screened by Petrucci and Kalvelage.

The record indicates that Employer has a policy under which it will consider candidates for the various jobs in the Service Department from within the department. In the past, some of the Employer's mechanics have asked to be considered for Service Advisor positions. While the Employer has hired people with technical or mechanical backgrounds from outside sources for service advisor and dispatcher positions, the Employer has not filled service advisor or dispatcher positions from the mechanics in the Service Department. The record also indicates that while service advisors have transferred to dispatcher positions, no dispatcher or service advisor has transferred to a mechanic position in the Service Department. Service advisors and dispatchers do not fill in for mechanics if there is a shortage of mechanics on a given day.

The mechanics, service advisors and dispatchers all report to and are evaluated by Tim Kalvelage, Lido Petrucci and Jeffery Orloff. They go through the same evaluation process, which consists of a six-month review after being hired, and then a year review on their first anniversary. After the first year they are subject to a yearly review. Both written and oral reviews are used, which include a self-evaluation form as well. Kalvelage and Petrucci are primarily responsible for handling disciplinary action the mechanics, service advisors and dispatchers receive. However, Jeffery Orloff may be involved, if necessary.

Mechanics, service advisors, and dispatcher's work Monday through Friday and half days on Saturdays. Service advisors and dispatchers start at 7:00 a.m. The mechanics start immediately thereafter at 7:30 a.m. Likewise, although mechanic's workdays end at 4:30 p.m., service advisors and dispatchers end their days at around 5:00 p.m. However, only service advisors and dispatchers qualify for any overtime after 45 hours of work. Mechanics, service advisors and dispatchers all take an hour lunch break approximately between 11:30 a.m. to 12:30 p.m. Two service advisors usually remain in

the service drives for that period of time in case customers come in. Mechanics, service advisors and dispatchers all get coffee breaks at approximately 9:00 a.m. and then another break in the afternoon. They use the same lunchroom, washroom, and locker area, which is also used by other employees.

Tim Kalvelage coordinates the training for the mechanics, service advisors, and dispatchers, all of whom are required to take various training and/or certification classes. Much of the training is associated with the CSI (Customer Satisfaction Ratings) maintained by Jaguar and Volvo based on customer surveys. Good CSI ratings are important to the Employer as Volvo provides monetary incentives on one hand, and, on the other hand, consistently poor ratings could result in the loss of the franchise to sell Volvo or Jaguar automobiles. Jaguar and Volvo provide CSI training classes. Training is also available on-line or at the Employer through Kalvelage. CSI training for mechanics is mostly technically oriented toward doing the repair right the first time, while training for service advisors and dispatchers focus on customer communication skills, phone skills, and time management. Service advisors and dispatchers also receive some basic technical skills training to understand the issues involved with automobile repairs so they can better communicate with customers. In addition to CSI training, mechanics are also required, on their own, to take ASE training (automotive service excellence training) and obtain ASE certifications. In order to obtain an ASE certification that mechanics take a course and pass a test. Brian Sprandeo, a mechanic, testified that some of these ASE classes are highly skilled and difficult classes. Service advisors, dispatchers, and mechanics also attend required classes annually that deal with new products so they understand new products that are coming out from Jaguar and Volvo.

Terms of Employment

Pay rates for mechanics, service advisors, and dispatchers are determined by Petrucci, Kalvelage and Jeffrey Orloff based on skill level, performance and the going pay rate for those positions. Mechanics are paid on the basis of their wage rate times the industry standard for the performance of specific jobs pursuant to the Mitchell's or Chilton's guidebooks (book time). Thus, if these guidebooks state that the time for a certain repair is one and one-half hours and the mechanic does the job in one hour, the mechanic is paid on the basis of his wage rate times the one and one-half hours stated in the guidebooks – not the actual time spent performing the job. Mechanics get paid twice a month. Service advisors and dispatchers are paid a salary plus a commission based on parts and labor sold by service advisors and dispatchers. Their commissions are paid on a monthly basis and their regular wages are paid twice a month.

All employees are governed under the same employee handbook. Similarly, all employees receive the same fringe benefits. All receive same paid vacation schedule based on length of service, holidays, health benefits, 401k contribution program, factory discount deals and the right to use the shop one night a month for their own personal vehicles. The mechanics, service advisors, and dispatchers get equal shares of any CSI incentive money given to the Employer by the manufacturers. Company outings such as holiday Christmas Parties, summertime picnics and other employee events inside or outside the dealership are open to all employees.

There is a variation in regular uniforms, with the mechanics wearing blue shirts with a dark blue applet shoulder pad versus service advisors and dispatchers wearing a white shirt and slacks with a tie. However, on Fridays, everybody wears the same shirt. The employees refer to it as “Team Friday”, which is a black polo shirt that has 'Howard Orloff' imprinted on it.

Kalvelage, Petrucci and Jeffery Orloff conduct monthly meetings, many of which involve the whole service department. These meeting cover communication issues, repair warranty issues, manufacturer’s expectations of the service department, and proper procedures for documenting problems. Mechanics also have separate meetings in which warranty issues, repair issues, and manufacturers expectations are discussed. In addition, in these meeting mechanics are told what management expects from employees concerning particular repairs and activities in the shop.

Analysis

Section 9(b) of the National Labor Relations Act directs the Board to “decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . .” “[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, ‘if not final, is rarely to be disturbed.’” *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976)(citation omitted). There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be “appropriate” so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826 (1992).

The issue in the instant case, as the Board’s decision in *Overnite Transportation Co.*, supra, at 723 makes clear, is whether the unit sought by the Petitioner is an appropriate unit, regardless of its size or whether it is the most appropriate unit:

In deciding the appropriate unit, the Board first considers the union’s petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining . . .

Herein the Petitioner seeks a craft unit consisting of the Employer’s journeymen and apprentice mechanics. The Employer seeks to include the service advisors and dispatchers in the unit contending that the mechanics are not a distinct homogenous group of craftsmen, but, rather, their functions are integrated with service advisors and dispatchers, who also exercise mechanical skills. In support of its position the Employer cites dicta from *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459, 460 (1986):

Rather, the Board has stated that when the mechanics have not been shown to be a distinct and homogeneous group of craftsmen and when “all employees in the service and parts department of an automobile sales and service establishment have and exercise in various degrees the skills of automotive mechanics and the functions they perform are related to the service and repair of automobiles, ... they should all be included in the same bargaining unit.” *Austin Ford*, supra at 1400.

Contrary to the Employer’s contention, I find that its mechanics do constitute a distinct and homogeneous group of craftsmen. The mechanics herein are much like the mechanics in *Dodge City of Wauwatosa, Inc.*, supra, which the Board found constituted an appropriate craft unit. Thus, like the mechanics in *Dodge City of Wauwatosa, Inc.*, the Employer’s mechanics: (1) are required to have the ASE training and certifications; (2) provide their own tools, which constitute a considerable investment; (3) engage in skilled functions and tasks that only they perform; (4) are paid on a different basis from other employees based on book time from the Mitchell’s or Chilton’s guidebooks; (5) their positions are not interchangeable with other employees – there have been no transfers of dispatchers or service advisors into mechanic positions or transfers of mechanics to dispatcher or service advisor positions; and (6) mechanics do not perform any of the job duties of the dispatchers or service advisors, nor do the dispatchers or service advisors perform any of the skilled mechanical duties of the mechanics. See also, *Fletcher Jones Las Vegas*, 300 NLRB 875 (1990).

I do not find the limited five minute mechanical functions performed by the service advisors in changing wiper blades or light bulbs constitute the exercise of mechanical skills to a degree such as to blur the distinct to demarcation of job functions performed by the mechanics from those performed by other employees as was found in *Austin Ford*, 136 NLRB 1398 (1962).

While the Employer’s mechanic’s share some community of interest with other service department employees with regard to supervision and contact with other employees such that a broader unit as proposed by the Employer may also be appropriate, I do not find these factors negate the separate distinct homogeneous community of interest that the mechanics have from the dispatchers and service advisors, as set forth above, that make the mechanics an appropriate separate craft unit. Quite simply the Employer’s mechanics perform distinct skilled mechanical functions that are not performed by any other employees, their jobs are not interchangeable with other employees, other employees have not transferred to mechanic positions and mechanics have not transferred to other positions. Further, their craft status and functions has resulted in significant differences from other employees with regard to pay rates and the heavy investment that mechanics must make in obtaining their own tools.

Howard Orloff Imports, Inc.
13-RC-21069

Conclusion

Based upon the entire record and the foregoing, I find the petitioned for unit of mechanics as described above to be an appropriate unit for collective bargaining. There are approximately 30 employees in the unit found appropriate.

440-1760-9133-0500
440-1760-9133-4300
440-1760-9133-6200
440-1760-9133-8600
440-1760-9167-0233

CATS - UntCU